IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2025

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

W.A.No.751 of 2023

S.Shanmugavelu,
Accountant,
Lalgudi Panchayat Union,
Trichirapalli District. ... Appellant

-Vs-

1. The District Collector,
   Collectorate,
   Trichirapalli.

2. The Accountant General (Audit)-1,
   Periyar E.V.R. Building,
   474, Anna Salai, Nandanam,
   Chennai – 600 035. ... Respondents

PRAYER : Appeal filed under Clause XV of the Letters Patent, against the order dated 23.12.2020 made in W.P.No.16762 of 2007.

For Appellant	:	Mr.R.Saseetharan
For Respondents	:	Mr.M.Alagu Gowthatm Government Advocate for R1 Mr.V.Vijayashankar Standing Counsel for R2

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.)**

This intra Court appeal has been directed against the order dated 23.12.2020 made in W.P.No.16762 of 2007.

2. That the appellant was the writ petitioner who was initially appointed as Typist in the Secretariat Service on 10.10.1986, then, he was promoted as Assistant with effect from 30.04.1991 and subsequently, promoted as Assistant Section Officer on 14.11.1994.

3. Thereafter, based on his own request, he was transferred to the Tamil Nadu Ministerial Service in Rural Development Unit, Trichirapalli where he joined duty as Junior Assistant, Thanthoni Panchayat Union on 05.04.1995.

4. Though his pay scale was originally fixed as Rs.975-25-1150-30-1600, subsequently the first respondent / District Collector passed an order on 23.04.1998 stating that the basic pay fixed as Rs.1,630/- was wrong and it only be Rs.1,210/- as per the objection raised by the second respondent, i.e., Accountant General.

5. As against which, though he unsuccessfully filed an appeal before the Head of the Department and subsequently he filed further appeal to the Government, the Government having considered the appeal filed by the appellant / petitioner has passed a Government Order in G.O.(Ms)No.262, Rural Development (E4) Department dated 24.05.2001 where the Government has passed the following order:

> *"2. The Government has carefully considered the appeal Petition of Thiru.Shanmugavadivelu, as forwarded by the Director of Rural Development and it is decided that the fixation of basic pay of Rs.1630+10 PP in the post of Junior Assistant is correct under FR 22 (11)(b)(ii), for the S.Shanmugavadivelu that the individual is entitled for annual increment at date on which he drew increment while working as Assistant Section Officer, at Secretariat, that order refixing his pay at Rs.1210+50 PP, is set aside and it is further ordered that the individual is entitled for arrears of pay.*
>
> *3. This order is issued as per the concurrence given in Government Letter No.23129/01-1 dated 14.05.2001 of the Personnel and Administrative Department."*

6. Therefore the pay anomaly or pay wrong fixation as objected by Accountant General, has been rectified by the said G.O.(Ms)No.262 dated 24.05.2001. Therefore, the appellant / petitioner would be entitled to get the same pay of Rs.1630+10 Personal Pay in the post of Junior Assistant.

7. However, despite G.O.(Ms)No.262 having been issued, the second respondent, i.e., Accountant General once again issued proceedings on 25.09.2002 stating that G.O.(Ms)No.262 is incorrect, therefore the para of objection is reiterated and the amount paid in excess is to be recovered from the individual.

8. Only pursuant to the said objection raised by the second respondent / Accountant General, the first respondent / District Collector has come forward to issue further proceedings on 13.11.2002 where he sought to recover the alleged excess amount paid to the appellant / petitioner in view of the pay having been fixed at the rate as stated in G.O.(Ms)No.262 dated 24.05.2001.

9. The said order of the District Collector seeking for recovery dated 13.11.2002 was under challenge before the writ Court.

10. The writ Court having considered the aforesaid facts has rejected the said writ petition through the impugned order.

11. Heard Mr.R.Saseetharan, learned counsel appearing for the appellant, Mr.M.Alagu Gowtham, learned Government Advocate appearing for the first

respondent and Mr.V.Vijayashankar, learned Standing Counsel appearing for the second respondent.

12. An attempt has been made by the second respondent to justify the objection raised by the Accountant General stating that Rule 22(1)(b) of Fundamental Rules would no way help in fixing the pay as has been claimed by the Government through G.O.(Ms)No.262, therefore there has been every justification on the part of the second respondent / Accountant General to reiterate the earlier stand of objection for the higher pay or the pay scale fixed in favour of the appellant / petitioner and therefore, the recovery has been recommended.

13. We have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

14. Insofar as the fixation of the correct pay on the appellant / petitioner is concerned, the issue has gone by way of further appeal before the Government and the Government having considered all aspects has issued the Government Order, i.e., G.O.(Ms)No.262 Rural Development (E4) Department

dated 24.05.2001 and the operative portion of the Government Order has already been extracted herein above where the Government has confirmed the fixation of the basic pay of Rs.1630+10 Personal Pay on the appellant / petitioner as the correct fixation whether it is under FR 22(1)(b)(ii) or otherwise.

15. Insofar as the fixation of the basic pay of the appellant / petitioner having been confirmed by issuance of Government Order whether that can be violated by the District Collector who is bound by the said Government Order even though the same has been opposed by the Accountant General, by his letter dated 25.09.2002.

16. In this regard, we do feel that, once G.O.(Ms)No.262 Rural Development (E4) Department dated 24.05.2001 is intact and the same has not been modified or withdrawn or cancelled, the import of the said Government Order issued by the Government will prevail over the objection raised by the Accountant General and therefore, based on such objection, the first respondent / District Collector ought not to have passed an order dated 13.11.2002 seeking for any recovery.

17. Moreover the appellant / petitioner on superannuation retired from service on 31.03.2015, therefore after these long years, the question of recovery from the appellant / petitioner does not arise.

18. Therefore, for all these reasons, we do not feel that the impugned order before the writ Court passed by the District Collector would sustain. Resultantly, the conclusion reached by the writ Court by disposing the said writ petition is erroneous. As a result of which, the impugned order is liable to be interfered with, accordingly, the order impugned is set aside.

19. In that view of the matter, this Court is inclined to dispose of the writ appeal with the following order:

> that there shall not be any recovery. If any recovery already been made pursuant to the order impugned, the same shall be refunded to the appellant / petitioner within a period of three months from the date of receipt of a copy of this judgment.

20. To that extent, this Writ Appeal is allowed. However, there shall be no order as to costs.

(R.S.K., J.) **(A.D.M.C., J.)**
17.03.2025

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

To

1. The District Collector,
   Collectorate,
   Trichirapalli.

2. The Accountant General (Audit)-1,
   Periyar E.V.R. Building,
   474, Anna Salai, Nandanam,
   Chennai – 600 035.

R.SURESH KUMAR, J.
and
A.D.MARIA CLETE, J.

vji

W.A.No.751 of 2023

17.03.2025